

Information Sharing

AND THE MULTIDISCIPLINARY CHILD ABUSE TEAM



Prepared by the Department of Criminal Justice Services
Children's Justice Act Program

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**“Coming Together is a Beginning.
Keeping Together is Progress.
Working Together is Success.”**

–Henry Ford





Preface

Federal Children's Justice Act funds have been awarded to the Commonwealth of Virginia since 1990. These funds are to be used for programs and initiatives that improve the investigation, prosecution and judicial handling of cases of child abuse and neglect, particularly child sexual abuse and exploitation, in a manner that limits additional trauma to the child victim.

The Virginia program has focused on engaging localities in a multidisciplinary team (MDT) approach to such cases. Over the past fifteen years, the Department of Criminal Justice Services (DCJS) has worked with over seventy localities to develop interagency teams with written protocols clarifying professional responsibilities. The Children's Justice Act Program provides training and on-site technical assistance, at no cost, to localities wishing to establish multidisciplinary teams. The goal of this work is to ensure that teams are conducting investigations in a manner that reduces trauma to child victims and produces better outcomes for the professionals involved.

Research supports the anecdotal accounts shared with the Children's Justice Act Program by professionals who have worked in localities with MDTs as well as localities without teams, who advise that the team approach works. One study revealed that in a jurisdiction where an MDT created a close working relationship between law enforcement and child protective services, three out of four cases were referred for criminal prosecution, and nearly 95 percent of those cases resulted in convictions.¹ A recent study comparing the legal outcomes in sexual abuse cases for children assessed at Child Abuse Assessment Centers (CAAC) and those that were not found: 1) More cases were filed when children were seen at the CAAC than if they were not assessed at the CAAC; 2) when cases were filed, more counts were charged if the children were seen at the CAAC than if they were not; 3) for filed cases, there were significantly more perpetrators in the CAAC group who pled or were found guilty compared with perpetrators in the non-CAAC group; and 4) more cases were filed for 4- to 6-year-old victims when they were seen at the CAAC compared to cases in which they were not seen at the CAAC.² It is difficult to measure the level of trauma experienced by a child, but it is widely believed that the use of a multidisciplinary approach limits the number of interviews thereby reducing trauma to child victims.

¹ Ells, Mark (1998). *Forming A Multidisciplinary Team To Investigate Child Abuse*. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

² Joa, D. & Edelson, M.G. (2004). Legal Outcomes for Children Who Have Been Sexually Abused: The Impact of Child Abuse Assessment Center Evaluations. *Child Maltreatment*, 3.

Professional representation on teams varies from jurisdiction to jurisdiction depending upon resources. It is now recommended that teams include individuals from law enforcement, child protective services, prosecution, medical and mental health agencies. Although a team does not need to be facility-based to have significant impact on the handling of abuse and neglect cases, there has been a recent trend toward co-locating these professionals in one building, typically referred to as a Children's Advocacy Center. The Children's Justice Act Program continues to serve all MDTs.

One issue that all MDTs encounter relates to sharing sensitive information with professionals from other agencies. This booklet was developed to provide guidance on Virginia law to professionals serving on MDTs. This information is provided as guidance to teams regarding what information may be shared and is not intended to provide legal advice or substitute for consultation with counsel.



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The Multidisciplinary Child Abuse Team

“All law–enforcement departments and other state and local departments, agencies, authorities and institutions shall cooperate with each child–protective services coordinator of a local department and any multi–discipline teams in the detection and prevention of child abuse.”

Code of Virginia §63.2-1507

The multidisciplinary team (MDT) approach is not new. It is now well accepted that the best response to the challenge of child abuse and neglect investigations is the formation of an MDT.³ Virginia law has provided for multidisciplinary team collaboration related to child abuse investigations since 1975, and Virginia has made strides in its efforts to form and sustain MDTs.

While local departments of social services have always been authorized to develop multidisciplinary teams for a variety of reasons, the *Code* now specifies that local departments may develop “multidisciplinary teams to provide consultation to the local department during the investigation of selected cases involving child abuse or neglect, and to make recommendations regarding the prosecution of such cases.” (VA Code §63.2-1503 (K)). This amendment, enacted during the 2004 General Assembly Session, became effective July 1, 2004. The section goes on to discuss the composition of the teams noting that teams “may include, but are not limited to, members of the medical, mental health, legal and law–enforcement professions, including the attorney for the Commonwealth or his designee; a local child–protective services representative; and the guardian ad litem or other court–appointed advocate for the child.” (VA Code §63.2-1503 (K)).

With the advent of the information age, MDTs face new challenges. As more personal information becomes available, there is a growing concern that governmental agencies and other entities with access to personal information guard it zealously.

³ Ells, Mark (1998). *Forming A Multidisciplinary Team To Investigate Child Abuse*. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

Effective 2001, the Virginia “Government Data Collection and Dissemination Practices Act” prescribes practices for gathering and using personal information. Specifically exempted from the Act are personal information systems “[m]aintained by the Department of State Police, police departments of cities, counties and towns; ... that deal with investigations and intelligence gathering related to criminal activity [e.g. child abuse]; and maintained by local departments of social services regarding alleged cases of child abuse or neglect while such cases are also subject to an ongoing criminal prosecution.” (VA Code §2.2-3802 (7)).

MDT members can share information. When the 2004 General Assembly made the above-referenced changes to section 63.2-1503 (K) regarding the purpose and composition of child abuse and neglect MDTs, they specifically included language allowing team members to share information. “Any information exchanged for the purpose of such consultation shall not be considered a violation of §§63.2-102, 63.2-104 or §63.2-105.” (VA Code §63.2-1503(K)). Teams may wish to consider having members sign a Confidentiality Agreement as a means of acknowledging the sensitive nature of information teams deal with and reminding members that information that the team shares with members should not be shared with non-members. (See Appendix A).

This resource document reviews Virginia laws relating to confidentiality requirements for various professions commonly represented on an MDT. This information is provided as guidance to teams regarding what information may be shared and is not intended to provide legal advice or substitute for consultation with counsel.



Department of Social Services Records

Upon receipt of a complaint where abuse and neglect is suspected in relation to:

1. A child's death;
2. An injury in which a felony or Class 1 misdemeanor is suspected;
3. Any actual or suspected sexual abuse or sexual offense;
4. Abduction of a child;
5. Any felony or Class 1 misdemeanor drug offense involving a child; or
6. Contributing to the delinquency of a minor,

DSS must notify an attorney for the Commonwealth and local law enforcement, making available any DSS records, including records of any complaints of abuse or neglect involving the victim or the alleged perpetrator. (VA Code §63.2-1503 (D)).

Code of Virginia §63.2-105 deals with confidential records and information concerning social services. This section explicitly permits local departments to share information with the MDT. "The local department [of social services] may disclose the contents of records and information learned during the course of a child-protective services investigation or during the provision of child-protective services to a family, without a court order and without the consent of the family, **to a person having a legitimate interest** when in the judgment of the local department [of social services] such disclosure is in the best interest of the child who is the subject of the records." (VA Code §63.2-105 (A)(emphasis added)).

Persons having a legitimate interest in child-protective services records of local departments of social services "include, but are not limited to, (i) any person who is responsible for investigating a report of known or suspected abuse or neglect or for providing services to a child or family that is the subject of a report, including **multi-disciplinary teams** and family assessment and planning teams referenced in subsection J & K of §63.2-1503, **law-enforcement agencies** and **attorneys for the Commonwealth**." (VA Code §63.2-105 (emphasis added)). This section goes on to specify that DSS may provide information to "personnel of the school or child day program as defined in §63.2-100 attended by the child so that the local department can receive information from such personnel on an ongoing basis concerning the child's health and behavior, and the activities of the child's custodian [...]."



Law Enforcement Records

According to Virginia law, police departments of the cities of the Commonwealth, and the police departments or sheriffs of the counties, as the case may be, shall keep separate records as to violations of law other than violations of motor vehicle laws committed by juveniles. (VA Code §16.1-301 (A)). While such records are not generally open to the public, inspection of such records is permitted by “[a]ny other person, agency, or institution, *by order of the court*, having a legitimate interest in the case or in the work of the law-enforcement agency.” (VA Code §16.1-301 (C)(3) (emphasis added)).

Thus, law enforcement records are strictly confidential and a court order is needed for their release. Unlawful disclosure of law enforcement records is a Class 3 misdemeanor, punishable by a fine of not more than \$500. (VA Code §16.1-309, VA Code §18.2-11(c)).

A 2002 change to the *Code of Virginia* section on mandated reporters provides that mandated reporters maintaining records on a child who is the subject of a report of suspected abuse or neglect shall cooperate with the local department of social services and make related information, records, and reports available to the local department of social services. (VA Code §63.2-1509). Thus, a law enforcement officer making a report would be able to make any information he or she had available to the department of social services. The section goes on to prohibit the local department of social services from further disseminating criminal investigative reports provided by law enforcement. Thus, criminal investigative reports must be shared with social services, but only law enforcement may share such reports with the entire multidisciplinary team.

Other information is readily available. Information available under the Virginia Freedom of Information Act (FOIA), including criminal incident information relating to felony offenses, can be shared with the MDT. (VA Code §2.2-3706). “However, where the release of criminal incident information is likely to jeopardize an ongoing investigation or prosecution, or the safety of an individual; cause a suspect to flee or evade detection; or result in the destruction of evidence, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information.” (VA Code §2.2-3706(B)).

It is unlikely that release of information to MDT members would jeopardize a case, thus, in most cases, it can be shared with the MDT. “Information in the custody of law-enforcement officials relative to the identity of any individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest” is also available under FOIA. (VA Code §2.2-3706 (C)).

Law enforcement officers have the discretion to share adult arrestee photographs and reports submitted in confidence to state and local law-enforcement agencies. (VA Code §2.2-3706 (F)(2 & 3)). Law enforcement officers are not required to release “[t]hose portions of noncriminal incident or other investigative reports or materials containing identifying information of a personal, medical or financial nature provided to a law-enforcement agency where the release of such information would jeopardize the safety or privacy of any person.” (VA Code §2.2-3706 (G)(1)).

Essentially, law enforcement officers are free to share public information, such as information that would be available under the Freedom of Information Act. More importantly, law enforcement officers may share information that is based on an officer’s personal knowledge or observation of the child and participate in MDT discussions on strategies for identifying and prosecuting the alleged offender.



Medical/Mental Health Records

Medical/mental health personnel making a report pursuant to the mandated reporter statute (VA Code §63.2-1509) must disclose all information which is the basis for the suspicion of abuse or neglect of the child and, upon request, shall make available to the child-protective services coordinator and the local department of social services, which is the agency of jurisdiction, any information, records or reports which document the basis for the report.

The mandated reporter law, which is not limited to medical/mental health personnel, states, “[a]ll persons required by this subsection to report suspected abuse or neglect who maintain a record of a child who is the subject of such a report shall cooperate with the investigating agency and shall make related information, records and reports available to the investigating agency unless such disclosure violates the federal Family Educational Rights and Privacy Act (20 U.S.C. §1232(g)). Provision of such information, records and reports by a health care provider shall not be prohibited by §8.01-399.” (VA Code §63.2-1509).

The section of the *Code of Virginia* that discusses patient health records permits providers to disclose the records of a patient as required or authorized by law relating to suspected child or adult abuse reporting requirements. (VA Code §32.1-127.1:03 (D)(6)).

Finally, the implementing regulations to the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) state that “[a] covered entity may disclose protected health information for the public health activities and purposes described in this paragraph to: ...[a] public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect” without consent. (45 C.F.R. §164.512 (b)(1)(ii)).

Please note that information related to substance abuse and treatment is governed by federal regulations that supercede state law referred to herein. [See 42 C.F.R. Part 2]



School Records

In 2003, the Virginia General Assembly made changes to the law outlining procedures that local departments of social services need to follow when investigating allegations of abuse by school personnel. (VA Code §63.2-1516.1). While the law requires social services to disclose information to the suspected abuser, there is some provision for protection if CPS is conducting a joint investigation with law enforcement. “In all cases in which an alleged act of child abuse or neglect is also being criminally investigated by a law-enforcement agency, and the local department is conducting a joint investigation with a law-enforcement officer in regard to such an alleged act, no information in the possession of the local department from such joint investigation shall be released by the local department except as authorized by the investigating law-enforcement officer or his supervisor or the local attorney for the Commonwealth.” (VA Code §63.2-1516.1(B)).

With respect to sharing school records with the multidisciplinary team, the school personnel are obliged to comply with federal law on the disclosure of student records. Enacted in 1974, Family Education Rights and Privacy Act (FERPA) protects the privacy interests of students and parents through standards designed to discourage abusive and unwarranted disclosure of a student’s education records. FERPA prohibits the sharing of student information without parental consent. However, in an emergency or health/safety situation, the school can provide access to the record. If the child is the victim and the parent is not the alleged offender, the MDT may be able to obtain parental consent to share the records with the MDT.

A FERPA violation could result in a school losing Federal funding, so school personnel must be careful. However, nothing in FERPA prevents a school official from disclosing to local law enforcement authorities or MDT’s, in accordance with the mandated reporter law (§63.2-1509 of the *Code of Virginia*), information that is based on that official’s knowledge or observation independent of records.

A “law enforcement unit record” that is maintained by a law enforcement unit of a school or school district is created by that unit for the purpose of law enforcement. FERPA does not prohibit the sharing of information from a law enforcement unit record. However, if a student’s “educational record” has been shared with the law enforcement unit, FERPA prohibits the law enforcement unit from disclosing the educational record without consent.

In March 2002, the Virginia Department of Education issued a Superintendent's Memo No. 27 (<http://www.pen.k12.va.us/VDOE/suptsmemos/2002/inf027.html>) and an attachment explaining the recommended procedure for handling a child abuse complaint (<http://www.pen.k12.va.us/VDOE/suptsmemos/2002/inf027a.pdf>). The recommended protocol states that when reporting, the local school employee should share with DSS "all information that establishes the basis for the suspicion of abuse or neglect of the alleged child victim." The protocol does not address participation of school personnel on a multidisciplinary team investigating an allegation of child abuse or outline what may be disclosed to an MDT.



Commonwealth's Attorneys' Records

It has long been established that there is a general right “to inspect and copy public records and documents, including judicial records and documents.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978). The Commonwealth’s Attorney may share documents considered public records with the MDT. These would include certain Circuit Court documents (VA Code §17.1-208) but would likely exclude certain juvenile court records (VA Code §16.1-305) based on the compelling interest of protecting the privacy rights of juveniles.

In 2001 the Virginia Supreme Court ruled that a defense attorney was not entitled to original records (e.g. police reports, investigative reports, etc.) containing “criminal incident information” sought pursuant to Virginia’s Freedom of Information Act (FOIA), but rather a summary of that information compiled by the Commonwealth’s Attorney. *Connell v. Kersey*, 262 VA 154 (2001).

The ruling was based on the Court’s finding that the Commonwealth’s Attorney is not a “public body” required under FOIA to make reasonable efforts to reach an agreement with a requester concerning the production of the records requested but is, a “constitutional officer.”

In response, the General Assembly amended FOIA in January 2002, clarifying that constitutional officers are public bodies and are subject to the same obligations to disclose public records as other custodians of such records. Thus, as of July 1, 2002, Commonwealth’s Attorneys need to respond to FOIA requests as public bodies do. Records that need not be disclosed under FOIA, but may be disclosed at the custodian’s discretion, include written advice of legal counsel to government officials as well as legal memoranda and other work products compiled for use in litigation.

Ultimately, the Commonwealth’s Attorney’s records will not be as useful to the MDT as his or her guidance on what crimes may have been committed in a particular case, the elements of those crimes, and whether additional evidence is needed to prove the crime occurred.

Closing

Most MDT members have concerns about maintaining the confidentiality of child victims and their families. This document was designed to provide guidance as to what information can be shared by team members based on the *Virginia Code*. Because the *Code* cannot address every situation, it has become common practice among many MDTs in Virginia to require their members to sign confidentiality agreements affirming their commitment to protect information learned through membership on the team.

The Children's Justice Act Program at the Department of Criminal Justice Services continues to provide on-site training and technical assistance to localities wishing to develop or enhance MDTs to investigate child abuse allegations. Localities that would like assistance developing a team, or need assistance with an existing team, should contact the Children's Justice Act Program.

**“Alone we can do so little;
together we can do so much”**

–Helen Keller





Appendix A

Sample Confidentiality Agreement

Individuals responsible for investigating allegations of child abuse and prosecuting suspected abusers have access to confidential information. Where child abuse is concerned, there are instances where sharing information is essential. The *Code of Virginia* requires all local law enforcement and other state and local departments, agencies, authorities, and institutions to cooperate with CPS coordinators of local departments of social services and any multidisciplinary teams in the detection and prevention of child abuse. (VA Code §63.2-1507).

In an effort to improve investigation and prosecution of child abuse cases, the _____
_____ Multidisciplinary Team meets regularly to discuss cases, develop a more coordinated approach to handling child abuse cases, and make recommendations related to prosecution. I understand that my regular attendance at Team meetings will produce the maximum benefits for the emotionally, physically, and/or sexually abused children of our community. If I must terminate membership on the Team, another member of my organization/agency will be appointed to participate.

As a member of _____ Multidisciplinary Team, I agree to adhere to strict confidentiality standards. I will not share case information discussed at team meetings publicly or with people who are not on the multidisciplinary team, unless that person has a legitimate, legal interest in the information. No material containing case identifying information will be taken from the meeting, except by the individual or agency that provided the material.

Member Signature

Member Name (Printed)

Member Agency/Organization

Date



Appendix B

Resources

I. National Resources

National Children's Alliance is a membership organization that supports and advocates on behalf of Children's Advocacy Centers nationwide.

National Children's Alliance
Nancy Chandler
Executive Director
1612 K Street, NW, Suite 500
Washington, DC 20006
(800) 239-9950 or (202) 452-6001

II. Virginia Resources

A. State Government

The Children's Justice Act Program at the Department of Criminal Justice Services (DCJS) works with localities wishing to establish or enhance multidisciplinary teams. DCJS will provide on-site technical assistance on protocol development as well as other team issues. For more information, please contact:

Holly S. Oehrlein
Children's Justice Act Program Coordinator
Department of Criminal Justice Services
Ninth Street Office Building, Suite 613, 202 N. 9th Street
Richmond, VA 23219 (Effective June 2005)
(804) 371-0534

E-mail: holly.oehrlein@dcjs.virginia.gov

www.dcjs.virginia.gov/juvenile/cja/teams

B. Organizations Promoting Children's Advocacy Centers

Children's Advocacy Centers of Virginia (CACVA) is the Official Virginia State Chapter of the National Children's Alliance. CACVA provides technical assistance to localities wishing to develop Children's Advocacy Centers and logistical support for existing centers.

Kay Kovacs, Coordinator

24326 Briscoe Drive

Bristol, VA 24202

(276) 669-3858

E-mail: kaycacva@peoplepc.com

www.cacva.com

The Child Protection Resource Center of Virginia, Inc., is a private, non-profit organization whose mission is to strengthen multidisciplinary teams and develop Children's Advocacy Centers in Virginia. For more information please contact:

Nan Leininger

The Child Protection Resource Center of Virginia, Inc.

P.O. Box 151002

Alexandria, VA 22315

(703) 960-5317

E-mail: info@childprotectva.org

www.ChildprotectVA.org

C. Children's Advocacy Centers and Child Abuse Assessment Centers

(1) National Children's Alliance–Full Members:

Children's Advocacy Center of Bristol/Washington County

Kathi Roark

P.O. Box 16231

Bristol, VA 24209

(276) 645-5867

E-mail: kroark@cacbwcv.org

Children's Advocacy Programs of the Blue Ridge, Inc.

Susan Miller

300 South Main Street

Rocky Mount, VA 24151

(540) 484-5566

E-mail: capscac@earthlink.net

Child Abuse Program

Lauri Hogge
Children's Hospital of the King's Daughters
935 Redgate Avenue
Norfolk, VA 23507
(757) 668-6100

www.chkdk.org

(2) National Children's Alliance - Associate Members:

ChildhelpUSA Children's Center of Virginia

Maggie Thorpe
8415 Arlington Boulevard
Fairfax, VA 22031
(703) 208-1500 E-mail: mthorpe@childhelpva.org

www.childhelpusa.org/virginia/childrenscenter.htm

Children's Advocacy Center of the New River Valley

Martha Raby
School of Social Work
0220 Waldron Hall, RU
Box 6958
Radford, VA 24142
(540) 831-7863 E-mail: meraby@radford.edu

Southwest Virginia Children's Advocacy Center

Carolyn Miller-Hubbard
P.O. Box 888
Block 1-A Industrial Park Drive
Big Stone Gap, VA 24219
(276) 523-4202 E-mail: chubbard@meoc.org

www.meoc.org

(2) National Children's Alliance - Associate Members: (Continued)

Greater Richmond SCAN (Stop Child Abuse Now)

Tanya Robertson

Child Advocacy Center Coordinator

1001 E. Broad Street, LL 40

Richmond, VA 23219

(804) 643-7226 E-mail: trobertson@grscan.com

www.grscan.com

(3) Programs Under Development

Arlington County DSS/CFSD

Siobhan Grayson

3033 Wilson Boulevard, Suite 600A-2

Arlington, VA 22201

(703) 228-1134 E-mail: Sgrays@co.arlington.va.us

City of Charlottesville Multidisciplinary Team

Gretchen Ellis

Charlottesville/Albemarle Multidisciplinary Team

1600 5th Street, Suite C

Charlottesville, VA 22902

(434) 872-4548 E-mail: gellis@albemarle.org

www.ccinfo.org

Mathews County Child Abuse/Neglect and Domestic Violence/Elder Abuse Multidisciplinary Team

Betsy Witt

Mathews County Department of Social Services

P. O. Box 925

Mathews, VA 23109

(804) 725-7192 E-mail: edw115@central.dss.state.va.us



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